* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 3406/2005

Delivered on May 25, 2007

KARIKALAN ..... Petitioner
Through Mr. B. Balaji, Advocate

versus

M/S BIRLA YAMAHA LTD. ..... Respondent
Through Mr. S.P. Singh, Mr. Naveen Khanna, Advocates

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

Mr. Justice S. Ravindra Bhat (Open Court)

1. In these proceedings the petitioner seeks quashing of a criminal complaint initiated by the respondent for alleged commission of offences under Sections 138/142 of the Negotiable Instruments Act (hereafter "the Act").

2. The complainant alleged that in the course of commercial transactions a cheque for Rs. 2.5 lakh was issued by the first accused. On 31.3.2002 it was presented and returned on the ground of insufficiency of funds. Subsequently, it was presented to the drawee bank which apparently returned, citing insufficiency of funds on 1.10.2002. On these grounds, the complaint was filed before the court.

3. A quashing order under Section 482 has been sought primarily on two grounds,

namely, that the cheque lost its character as a negotiable instrument since it was presented to the drawer bank on 1.10.2002 i.e. after the period of its validity. The second contention raised is that the present petitioner has no connection with the instrument as he was not the drawer of the cheque; the same , being his brother, who had transacted with the complainant.

4. The petition was resisted by the respondent complainant who relied upon the original records and submitted that the cheque was not returned on the ground of its being invalid or having lost its character as an instrument but on the specific ground of insufficiency of funds. It was, therefore, contended that the defence as to whether it was an instrument or not is a matter of trial. As far as the other ground, namely, the petitioner is not being a signatory or a drawer, it was contended that the complainant had no means to verify who in fact executed or signed the cheque. These were sent to the complainant and after notice was issued the petitioner never denied his liability. It was contended that not being a drawer there was no need for the petitioner to have ever responded to the notice.

5. During the course of the hearing, learned counsel for the petitioner relied upon the judgment of the Supreme Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan,* (1999) 7 SCC 510 for the proposition that an offence under Section 138 is complete in five circumstances and that it is neither of those occasions arose in this case.

6. An examination of the cheque issued on 31.3.2002 shows that it was presented on two separate occasions. The return memo issued by the drawer bank does not support the case of the petitioner; the instrument was returned with the remarks "exceeds

arrangements".

7. So far as the second ground urged in support of the petition concerned, I am of the opinion that this fact is a matter of trial. The circumstances under which the transaction took place, i.e. whether the petitioner and the respondent complainant were known to each other, whether the respondent complainant would have identified the signatures of the drawer of the cheque are all matters which require to be considered during the course of the trial and cannot be assumed, on the basis of the pleadings in Section 482. Likewise, on this ground also the third objection that the complaint is not maintainable by placing reliance in the judgment of the Supreme Court in *K. Bhaskaran's* case (supra) cannot be accepted.

7. In view of the above, I am of the opinion that this petition is without merit. It is accordingly dismissed. The record of the trial court shall be returned forthwith.

S.RAVINDRA BHAT, J

MAY 25, 2007
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